



STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NEW YORK 10007-1866

FEB 23 2016

**VIA CERTIFIED MAIL:**  
**RETURN RECEIPT REQUESTED**

Union Carbide Corp.  
7501 State Highway 185 North  
Seadrift, Texas 77983  
Attn: Richard A. Wells, CEO & President

Re: Request for Information Pursuant to Section 104 of CERCLA  
Niagara Falls Boulevard Site, 9524 & 9540 Niagara Falls Boulevard, Niagara Falls,  
Niagara County, New York and Holy Trinity Cemetery Site 5401 Robert Avenue,  
Lewiston, Niagara County, New York

Dear Mr. Wells:

The United States Environmental Protection Agency ("EPA") is charged with responding to the release or threatened release of hazardous substances, pollutants, and contaminants into the environment and with enforcement under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. §§ 9601-9675 (also known as the "Superfund" law). For your information, a copy of the Superfund law may be found at [www.epa.gov/superfund/action/law/index.htm](http://www.epa.gov/superfund/action/law/index.htm).

This letter seeks the cooperation of the Union Carbide Corporation ("Union Carbide") in providing information and documents related to the Niagara Falls Boulevard ("NFB") Site and the Holy Trinity Cemetery ("HTC") Site (collectively, the "Sites"). The NFB Site encompasses 2.53 acres and consists of two parcels, 9524 and 9540 Niagara Falls Boulevard, Niagara Falls, Niagara County, New York (the "9524 parcel" and the "9540 parcel," respectively). The 9524 parcel contains a bowling alley and an asphalt parking lot; the 9540 parcel also contains an asphalt parking lot, as well as a vacant building. The HTC Site is located at 5401 Robert Avenue, Lewiston, Niagara County, New York, and is estimated to constitute 2.91 acres of a 31.5-acre cemetery. There is one building on the HTC Site, which is utilized as a residence and a cemetery maintenance facility.

EPA has documented the release and threatened release of hazardous substances into the environment at the Sites. In 1978, the United States Department of Energy conducted an aerial radiological survey of the Niagara Falls region and found more than 15 properties with levels of radiation elevated above background. In December 2013, EPA collected soil and slag samples that confirmed the presence of elevated gamma radiation on both Sites. The concentrations of radionuclides found in the slag and soil samples were significantly higher than the background

conditions. From July 2015 to August 2015, EPA conducted further radiological assessment of the interior and exterior of structures and soils on both parcels. EPA is in the process of analyzing the data collected from this assessment to determine whether CERCLA removal actions will be necessary at the Sites.

EPA has obtained information indicating that slag from Union Carbide's former facility located on 47<sup>th</sup> Street in Niagara Falls may have been used as fill at the Sites. Under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), EPA has broad information-gathering authority that allows EPA to require persons to provide information or documents relating to the materials generated, treated, stored, or disposed of at or transported from a facility, the nature or extent of a release or threatened release of a hazardous substance, pollutant, or contaminant at or from a facility, and the ability of a person to pay for or perform a cleanup.

A complete and truthful response to the Request for Information should be provided to EPA within **30 calendar** days of your receipt of this letter.

While EPA seeks your cooperation in this investigation, compliance with the Request for Information is required by law. When you have prepared a response to the Request for Information, please sign and have notarized the enclosed "Certification of Answers to Request for Information," and return that Certification to EPA along with your response. Please note that false, fictitious, or fraudulent statements or representations may subject you to civil or criminal penalties under federal law. In addition, Section 104 of CERCLA authorizes EPA to pursue penalties for failure to comply with a Request for Information.

Some of the information EPA is requesting may be considered by you to be confidential. Please be aware that you may not withhold the information upon that basis. If you wish EPA to treat the information confidentially, you must advise EPA of that fact by following the procedures described in the Instructions that follow this letter, including the requirements for supporting your claim for confidentiality.

Please note that if after submitting your response you obtain additional or different information concerning the matters addressed by this Request for Information, it is necessary that you promptly supplement your response as described in the Instructions.

This Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501.

See the enclosed Instructions for information on how to respond to the enclosed questions and/or information requests. Your response to this Request for Information should be mailed and/or electronically sent to:

Ms. Bonnie Hriczko  
Removal Action Branch  
U.S. Environmental Protection Agency, Region II  
2890 Woodbridge Avenue, Bldg 205 (MS-211)  
Edison, New Jersey 08837  
[Hriczko.Bonnie@epa.gov](mailto:Hriczko.Bonnie@epa.gov)

A copy of your reply should be sent to:

Margo Ludmer, Esq.  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region II  
290 Broadway, 17th Floor  
New York, New York 10007  
[Ludmer.Margo@epa.gov](mailto:Ludmer.Margo@epa.gov)

Please give the matters addressed in this letter your immediate attention. If you have any questions regarding this Request for Information, or would like to discuss this matter with EPA, please contact Ms. Hriczko at (732) 321-6647. Inquiries from attorneys should be addressed to Ms. Ludmer at (212) 637-3187.

We appreciate and look forward to your prompt response to this Information Request.

Sincerely,

A handwritten signature in black ink, appearing to read "N. DiForte".

Nicoletta DiForte, Deputy Director for Enforcement  
Emergency and Remedial Response Division

Enclosure

## **INSTRUCTIONS FOR RESPONDING TO REQUEST FOR INFORMATION**

1. A complete and separate response should be given for each question and/or information request. If information or documents responsive to this Request for Information are not in your possession, custody, or control, please identify the person(s) from whom such information may be obtained.
2. Identify each answer with the number of the question and/or information request and the subpart to which it responds. For each document produced in response to this Request for Information, indicate on the document, or in some other reasonable manner, the question to which it applies.
3. Provide responses to the best of your ability, even if the information sought was never put down in writing or if the written documents are no longer available. Consult with all present and past employees and agents of your company whom you have reason to believe may be familiar with the matter to which the question pertains.
4. In answering each question, identify each individual and any other source of information (including documents) that were consulted in the preparation of the response to the question.
5. If you have reason to believe that an individual or entity other than one employed by or known to Union Carbide may be able to provide additional details or documentation in response to any question, state that person or entity's name, last known address, phone number, and the reasons for your belief.
6. If you cannot provide a precise answer to a question, please approximate, but in any such instance, state the reason for your inability to be specific.
7. If a document is requested, but not available, state the reason for its unavailability. To the best of your ability, identify the document by author, date, subject matter, and number of pages, and identify all recipients of the document with their last known addresses and phone numbers.
8. If anything is omitted from a document produced in response to the Request for Information, state the reason for, and the subject matter of, the omission.
9. If additional information or documents responsive to this Request become known or available to you after you respond to this Request, EPA hereby requests pursuant to Section 104(e) of CERCLA that you supplement your response to EPA within **15 calendar days** from the date such information or documents became available to you.

10. Confidential Information: The information requested herein must be provided even though you may contend that it includes confidential information or trade secrets. You may assert a confidentiality claim covering all or part of the information requested, pursuant to Sections 104(e)(7)(E) and (F) of CERCLA, 42 U.S.C. § 9604(e)(7)(E) and (F), and 40 C.F.R. § 2.203(b).

If you make a claim of confidentiality for any of the information you submit to EPA, you must prove that claim. For each document or response you claims is confidential, you must separately address the following points:

- a. the portions of the information alleged to be entitled to confidential treatment;
- b. the period of time for which confidential treatment is desired (e.g., until a certain date, until the occurrence of a specific event, or permanently);
- c. measures taken by you to guard against an unintended disclosure of the information to others;
- d. the extent to which the information has been disclosed to others and the precautions taken in connection therewith;
- d. pertinent confidentiality determinations, if any, by EPA or other federal agencies, and a copy of any such determination, if available, or a reference to them; and
- f. whether you assert that disclosure of the information would likely result in substantial harmful effects to your business' competitive position, and if so, what those harmful effects would be, why they should be viewed as substantial, and an explanation of the causal relationship between disclosure and such harmful effects.

To make a confidentiality claim, please stamp or type "confidential" on all confidential responses and any related confidential documents. Confidential portions of otherwise non-confidential documents should be clearly identified. You should indicate a date, if any, after which the information need no longer be treated as confidential. Please submit your responses so that all non-confidential information, including any redacted versions of documents, are in one envelope and all materials for which you desire confidential treatment are in another envelope.

All confidentiality claims are subject to EPA verification. It is important that you satisfactorily show that you have taken reasonable measures to protect the confidentiality of the information, that you intend to continue to do so, and that the information is not and has not been obtainable by legitimate means without your consent. Information

covered by such claim will be disclosed by EPA only to the extent permitted by Section 104(e) of CERCLA and 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, then it may be made available to the public by EPA without further notice.

## **B. DEFINITIONS**

1. The term “arrangement” means every separate contract or other agreement between two or more persons, whether written or oral.
2. The term “document” or “documents” shall mean any written, recorded, computer generated, or visually or aurally reproduced material of any kind in any medium in your possession, custody, or control or known by you to exist, including originals, all prior drafts, and all non-identical copies.
3. The term “Facility” shall mean Union Carbide’s former facility located on 47<sup>th</sup> Street in Niagara Falls, New York.
4. The term “hazardous substances” shall have the meaning set forth in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
5. The term “identify” means, with respect to a natural person, to set forth the person’s name, present or last known employer and business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, occupation, position, or business. The term “identify” means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship), to provide its full name, address, and a brief description of its business.
6. The term “industrial waste” shall mean any solid, liquid, or sludge, or any mixture thereof, that possesses any of the following characteristics:
  - a. it contains one or more hazardous substances (at any concentration) as defined in 42 U.S.C. § 9601(14);
  - b. it is a “hazardous waste” as defined in 42 U.S.C. § 6903(5);
  - c. it has a pH less than 2.0 or greater than 12.5;
  - d. it reacts violently when mixed with water;
  - e. it generates toxic gases when mixed with water;
  - f. it easily ignites or explodes;
  - g. it is an industrial waste product;
  - h. it is an industrial treatment plant sludge or supernatant;
  - i. it is an industrial byproduct having some market value;
  - j. it is coolant water or blowdown waste from a coolant system;
  - k. it is a spent product which could be reused after rehabilitation; or
  - l. it is any material which you have reason to believe would be toxic if either ingested, inhaled or placed in contact with your skin.
7. The term “material” or “materials” shall mean any and all objects, goods, substances, or

matter of any kind, including but not limited to wastes.

8. The term "person" shall include any individual, firm, unincorporated association, partnership, corporation, trust, non-profit organization, or other entity.
9. The term "pollutant or contaminant" shall have the same definition as that contained in Section 101(33) of CERCLA, 42 U.S.C. § 9601(33), and includes any mixtures of such pollutants or contaminants with any other substances. Petroleum products mixed with pollutants and contaminants are also included in this definition.
10. The term "release" shall have the meaning set forth in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
11. The term "Sites" shall mean the Niagara Falls Boulevard Site located at 9524 and 9540 Niagara Falls Boulevard, Niagara Falls, Niagara County, New York, and the Holy Trinity Cemetery Site located at 5401 Robert Avenue, Lewiston, Niagara County, New York.
12. The term "Union Carbide," "the Company," "your Company," and "you" shall mean Union Carbide Corporation and its predecessors, successors, subsidiaries, divisions, branches, officers, managers, employees, contractors, trustees, partners, assigns, and agents.
13. The term "waste" or "wastes" shall mean and include trash, garbage, refuse, by-products, solid waste, slag, hazardous waste, hazardous substances, and pollutants or contaminants, whether solid, liquid, or sludge, including but not limited to containers for temporary or permanent holding of such wastes.
14. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in CERCLA or the Resource Conservation and Recovery Act ("RCRA"), in which case the statutory definitions shall apply.



## **REQUEST FOR INFORMATION**

1. State the correct legal name and mailing address of your Company.
2. If your Company wishes to designate an individual for any future correspondence concerning the Sites, including any legal notices, please so indicate here by providing that individual's name, address, telephone number, and email address.
3. State the name and address of the President, the Chief Executive Officer, and the Chairman of the Board of your Company.
4. Identify the state and date of incorporation of your Company and your Company's agent for service of process in New York and in your state of incorporation.
5. If Union Carbide Corporation currently is, or was at any time, a subsidiary or affiliate of another corporation or other business entity, or has or had subsidiaries that operated within the Niagara Falls region of New York, or is a successor to another company, identify these related companies. For each related company, describe the relationship to Union Carbide Corporation and indicate the date and manner in which each relationship was established.
6. If Union Carbide Corporation, or its subsidiaries or divisions in the Niagara Falls region of New York, has/have been taken over or acquired by another corporation, or is/are a wholly owned subsidiary of another company, please describe the nature of the takeover, how it occurred, and who is now responsible for Union Carbide Corporation's prior and current environmental and financial matters.
7. Indicate whether Union Carbide ever owned and/or operated either of the Sites or any portions thereof, either solely or as a partnership. If so, identify the dates of your Company's ownership and/or operation and provide copies of all documents evidencing such ownership and/or operation, including but not limited to purchase and sale agreements, deeds, leases, etc. Provide a detailed description of the operations, processes, or business activities your Company conducted at the Sites.
8. Indicate whether Union Carbide entered into any oral or written agreements or understandings concerning the Sites or any parcels adjacent to the Sites, including any arrangements with the current or prior property owners or operators to transfer materials to the Sites or the adjacent parcels. If so, describe the nature of these agreements or understandings, and provide any relevant documents.
9. Provide any information and/or documents relating to ownership and operation by you or any other entity, past and present, of the Facility. Identify the dates of your Company's ownership and/or operation of the Facility and provide copies of all documents

evidencing such ownership and/or operation, including but not limited to purchase and sale agreements, deeds, leases, etc.

10. Identify any persons or entities that concurrently with Union Carbide exercised actual control or that held significant authority to control activities at the Facility, including but not limited to partners or joint ventures; contractors, subcontractors, or licensors with a presence or activity at the Facility (e.g., service contractors, remediation contractors, management and operator contractors, licensors providing technical support to licensed activities); and, any person that subleased land, equipment, or space at the Facility.
11. Describe in detail the nature of the operations at the Facility, including but not limited to the types of work performed there and the industrial, chemical, or institutional processes undertaken by you at the Facility.
12. Provide any information and/or documents related to the industrial processes at the Facility involving radioactive materials and radioactive waste generated.
13. Indicate whether Union Carbide processed niobium (also known as columbium) or niobium ore at the Facility or any other Union Carbide facility in Erie and Niagara County. If so, provide a thorough explanation of such operations, including when they occurred, where the process took place, the specific procedures followed, a description of the chemicals or materials used and/or generated in the process (including radioactive byproducts), and a description of how the industrial waste was handled and/or disposed of.
14. Provide any information and/or documents related to the nature, chemical composition or physical state of radioactive materials and radioactive wastes produced at the Facility or any other Union Carbide facility in Erie and Niagara County.
15. Please provide any information and/or documents related to all releases or suspected releases that have occurred on or from the Facility involving radioactive materials and radioactive waste.
16. Please provide contact information, including names, telephone numbers, email addresses and physical mailing addresses for all former employees of either you, other companies, or government agencies that have knowledge of operations at the Facility associated with radioactive materials including the disposal of these radioactive materials at or near the Facility. If no current contact information is available, provide the last known contact information.
17. Describe each position, formal and/or informal, that the individuals who operated the Facility held with the company. Your description should include, but not be

limited to, each person's name who held those positions, the duties and responsibilities of each position, the actual tasks that they performed, both routinely and occasionally, and the dates that they held these positions.

18. For each of the positions identified in questions 16, list any responsibilities with respect to management, control, and day-to-day operations, including waste handling practices and all other operations at the Site.
19. Describe the circumstances that precipitated the termination of operations at the Facility and indicate whether the operations were relocated. State the last known processes involving radioactive materials performed by you at the Facility.
20. Please provide any information and/or documents related to the transport of radioactive materials or radioactive wastes between the Facility and the Sites, as well as from other facilities operated by you and the Sites. Please include any reports, maps, and aerial photography that identify the exact routes used to transport these materials from source to destination.
21. Please provide any knowledge, information and/or documents related to the disposal of radioactive materials or radioactive wastes from the Facility. Please include any reports, information or data related to soil, and geology at and about the disposal locations. Provide copies of all documents containing such data and information, including both past and current aerial photographs of the disposal locations, as well as documents containing analysis or interpretation of such data from the disposal sites.
22. Please provide contact information, including name, telephone number, email address, and physical mailing address for all persons and former employees of either you or other companies or government agencies who transported or disposed of radioactive materials or radioactive waste to and from the Facility. If no current contact information is available, provide the last known contact information.
23. Provide any knowledge, information, and/or documents related to the disposal of any radioactive materials or radioactive wastes from your former facility at East Park Drive in Tonawanda, New York. Identify all persons and former employees of either you or other companies or government agencies who transported or disposed of radioactive materials and radioactive waste from this Tonawanda facility.
24. Provide all information of which you are aware regarding the disposal of radioactive materials at the Sites, including but not limited to when the disposal of such material took place, the source of the material, and the entity(ies) that disposed of the material. Provide knowledge, information, and/or documents relating to contracts, agreements, or permits between any persons involved in any activities associated with the ultimate placement of radioactive materials and/or radioactive waste at the Sites.

25. Indicate whether Union Carbide has ever conducted any assessments, investigations, or cleanup of hazardous substances or wastes at the Sites. If yes, identify all environmental contractors and consultants and describe the remediation/action they conducted or planned to conduct at the Sites and the date(s) that the action(s) took place. Provide copies of all letters, reports, and conclusions issued by the contractors and consultants regarding the Sites, including the names of the wastes that were disposed of and the location of disposal.
26. Provide any knowledge, information, and/or documents related to all licenses and permits issued by the federal or state government with respect to your Facility and any other Union Carbide facility in Erie and Niagara County for the possession, use, storage, and/or disposal of radioactive materials and radioactive waste. Your response must include copies of the identified licenses and permits.
27. Please provide any additional information or documents that you may have regarding the identity of parties that may have been a source of, or were otherwise responsible for, the hazardous substances or industrial wastes that came to be located at the Sites. Please identify the source(s) of your information.
28. Identify all individuals who may have information or documents relating to the generation, handling, storage, transportation, or disposal of the hazardous substances or industrial wastes that came to be located at the Sites.
29. Identify all individuals with knowledge of facts relating to the responses provided to this Request for Information. Identify each individual who assisted or was consulted or who answered on behalf of Union Carbide in the preparation of its response to this Request for Information, and specify the question with which each person assisted in responding.

**NIAGARA FALLS BLVD AND HOLY TRINITY CEMETERY SITES**  
**CERTIFICATION OF ANSWERS TO REQUEST FOR INFORMATION**

State of \_\_\_\_\_:

County of \_\_\_\_\_:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document (response to EPA Request for Information) and all documents submitted herewith, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete, and that all documents submitted herewith are complete and authentic unless otherwise indicated. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. I am also aware that I am under a continuing obligation to supplement my response to EPA's Request for Information if any additional information relevant to the matters addressed in EPA's Request for Information or my response thereto should become known or available to me.

\_\_\_\_\_  
NAME (print or type)

\_\_\_\_\_  
TITLE (print or type)

\_\_\_\_\_  
SIGNATURE

Sworn to before me this  
day of \_\_\_\_\_, 2016

\_\_\_\_\_  
Notary Public